



Roinn an Taoisigh  
Department of the Taoiseach

Right to Know  
25 Herbert Place  
Dublin 2

20 November 2018

**Reference:** AIE/2018/0008

Dear Right to Know,

I refer to your request dated 4 October 2018 under the provisions of EU Directive 2003/4/EC 'Access to Information on the Environment' and SI 133/2007 European Communities (Access to Information on the Environment) Regulations 2007, as amended, to:

*'Please provide the following in relation to the cabinet committee that is overseeing the high-level steering group responsible for the national mitigation plan and the national adaptation framework.'*

1. *Identify the membership of the committee including anyone invited to attend who is not formally a member (for example officials or external consultants).*
2. *The terms of reference (or similar) for the committee*
3. *All agendas for committee meetings from 1 January 2017 to date*
4. *All meeting minutes from 1 January 2017 to date*
5. *All reports, presentations and other documents that have been considered by the committee from 1 January 2017 to date.*
6. *All reports to Cabinet from 1 January 2017 to date.'*

Following a thorough search of the records of the Department of the Taoiseach, 22 records have been identified as relating to the request. Of these 22 records, 5 records are being released in full and 17 records are being withheld. The basis for the decision to release, withhold and/or redact certain parts of records is outlined in the Schedule of Records at Appendix I. Detail of the public interest test that I carried out in respect of each of the records is at Appendix II.

Having considered the High Court judgment in Right to Know CLG and An Taoiseach and Minister for Communications, Climate Action and Environment [2018] given on 6 June 2018, I wish to explain that the department generally considers the records in question to be exempt from release under the AIE regulations, namely, sections 8 (b) and 9 (2) (d).

I also wish to inform you that, in general, it is considered that Cabinet discussions do not come within the definition of environmental information prescribed in the regulations. In carrying out this review, a distinction has been drawn between the wider consideration of matters by government and the narrower Cabinet discussions showing the views of members of the Government.

The definition of environmental information in the regulations is:

“any information in written, visual, aural, electronic or any other material form on -

- a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements,
- b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment,
- c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements,
- d) reports on the implementation of environmental legislation,
- e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c), and
- f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are, or may be, affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

I consider that while the definition of environmental information clearly extends beyond hard information on the state of the environment and factors affecting the environment in subparagraphs (a) and (b), to policy material in subparagraphs (c) and (d), Cabinet discussions, consisting as they do of the views of members of the Government, as opposed to factual information, do not fall within the scope of the definition of environmental information.

More generally, the judgement in *Attorney General v Hamilton* made clear that the protection afforded by Article 28 of the Constitution in relation to Cabinet discussions is to facilitate “full, free and frank discussion between members of the Government prior to the making of decisions.” This is very different to the ‘measures … policies, legislation, plans, programmes’ in the definition of environmental information which clearly refer to the outcome, rather than the process of decision making.

Notwithstanding the above view, if, in the alternative, the parts of the records comprising Cabinet discussions were to be considered as falling within the definition of environmental information as defined in the AIE Regulations, in considering release, particular regard has to be had to article 9 (2) (d) of the AIE Regulations which provides a discretionary ground for refusal of information where it concerns internal communications of public authorities, taking into account the public interest served by disclosure.

Regard is also required in relation to article 8 (b) of the AIE Regulations, which provides that a public authority shall not make available environmental information to the extent that it would involve the disclosure of discussions at one or more meetings of the Government. This ground mandates a refusal under the AIE Regulations, subject to article 10.

Article 10 (1) of the AIE Regulations provides that notwithstanding article 8, a request for environmental information shall not be refused where the request relates to information on emissions into the environment. As the record in question here does not refer to emissions into the environment article 10 (1) does not apply.

In addition, article 10 (1) is itself subject to further sub-articles in article 10. Article 10 (2) states a reference in sub-article (1) to information on emissions into the environment shall not include a reference to any discussion on the matter of such emissions at any meeting of the Government. As above, the records in question here do not refer to emissions into the environment and article 10 (2) does not apply.

Article 10 (3) provides that a public authority shall consider each request on an individual basis and weigh the public interest served by disclosure against the public interest served by refusal.

Article 10 (4) states that the grounds for refusal of a request for environmental information shall be interpreted on a restrictive basis having regard to the public interest served by disclosure.

Article 10 (5) provides that nothing in article 8 or 9 shall authorise a public authority not to make available environmental information which, although held with information to which article 8 or 9 relates, may be separated from such information.

You are entitled under AIE Regulations to appeal this decision within one month of the date of this notification. In the event you wish to make such an appeal, you may do so in writing to the Freedom of Information Unit, Department of the Taoiseach, Government Buildings, Merrion Street, D02 R583, referring to this letter. An appeal would involve a complete reconsideration of the matter by a more senior member of the staff of this Department and the decision would be communicated to you within one month of receipt of the appeal.

Yours sincerely,



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## Appendix I: AIE request No. 2018/0008 – Schedule of Records

### Part 1: Identify the membership of the committee including anyone invited to attend who is not formally a member (for example officials or external consultants).

1.	<p>Membership of Cabinet Committee D (CC D) which covers, inter alia, infrastructure investment, housing, and climate action.</p> <p>Please note that Secretaries General and/or a nominated official/s (topic dependent) are invited to attend with Ministers. The Assistant Secretary of the Economic Division, D/Taoiseach is Secretary to the Committee.</p>	July 2017	Released	
Available from: <a href="http://www.taoiseach.gov.ie/DOT/eng/Taoiseach_and_Government/Cabinet_Committees/Cabinet_Committee_D_Infrastructure.html">www.taoiseach.gov.ie/DOT/eng/Taoiseach_and_Government/Cabinet_Committees/Cabinet_Committee_D_Infrastructure.html</a>				
2.	<p>Membership of the Cabinet Committee on Infrastructure, Environment &amp; Climate Action (CC IECA).</p> <p>Please note that Secretaries General and/or a nominated official/s (topic dependent) are invited to attend with Ministers. The Assistant Secretary of the Economic Division, D/Taoiseach was Secretary to the Committee.</p>	May 2016	Released	

### Part 2: The terms of reference (or similar) for the committee

3.	Overview of work of Cabinet Committees	06.11.18	Released	
		Available from: <a href="http://www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Cabinet_Committees/Cabinet_Committees_of_the_31st_Government.html">www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Cabinet_Committees/Cabinet_Committees_of_the_31st_Government.html</a>		
4.	<p>Overview of work of CC D</p> <p>Extract: Oral reply to PQ on Cabinet Committee D (Infrastructure), 23 October 2018</p>	23.10.18	Released	
		Available from: <a href="http://www.oireachtas.ie/en/debates/debate/dail/2018-10-24/17/#s19">www.oireachtas.ie/en/debates/debate/dail/2018-10-24/17/#s19</a>		
5.	<p>Overview of work of CC IECA</p> <p>Extract: Oral reply to PQ on the Cabinet committee on infrastructure, environment and climate action, 23 May 2017</p>	23.05.17	Released	
		Available from: <a href="http://www.oireachtas.ie/en/debates/question/2017-05-23/2/?highlight%5B0%5D=cabinet&amp;highlight%5B1%5D=committee&amp;highlight%5B2%5D=infrastucture&amp;highlight%5B3%5D=environment&amp;highlight%5B4%5D=climate&amp;highlight%5B5%5D=action">www.oireachtas.ie/en/debates/question/2017-05-23/2/?highlight%5B0%5D=cabinet&amp;highlight%5B1%5D=committee&amp;highlight%5B2%5D=infrastucture&amp;highlight%5B3%5D=environment&amp;highlight%5B4%5D=climate&amp;highlight%5B5%5D=action</a>		

**Part 3: All agendas for committee meetings from 1 January 2017 to date (4 October 2018)**

6.	Agenda, CC D, 1 February 2018	01.02.18	Withheld	Material outside scope
7.	Agenda, CC D, 23 November 2017	23.11.17	Withheld	Material outside scope
8.	Agenda, CC D, 12 September 2017	12.09.17	Withheld	Material outside scope
9.	Agenda, CC IECA, 15 May 2017	15.05.17	Withheld	8 (b) and 9 (2) (d) of the AIE Regulations  Material outside scope
10.	Agenda, CC IECA, 30 January 2017	30.01.17	Withheld	8 (b) and 9 (2) (d) of the AIE Regulations  Material outside scope

**Part 4: All meeting minutes from 1 January 2017 to date (4 October 2018)**

11.	Note, CC D, 1 February 2018	01.02.18	Withheld	Material outside scope
12.	Note, CC D, 23 November 2017	23.11.17	Withheld	Material outside scope
13.	Note, CC D, 12 September 2017	12.09.17	Withheld	Material outside scope
14.	Note, CC IECA, 15 May 2017	15.05.17	Withheld	8 (b) and 9 (2) (d) of the AIE Regulations  Material outside scope
15.	Note, CC IECA, 30 January 2017	30.01.17	Withheld	8 (b) and 9 (2) (d) of the AIE Regulations  Material outside scope

**Part 5: All reports, presentations and other documents that have been considered by the committee from 1 January 2017 to date (4 October 2018)**

16.	National Mitigation Plan Update (CC IECA, 15 May 2017)	15.05.17	Withheld	8 (b) and 9 (2) (d) of the AIE Regulations  Material outside scope
17.	Draft Briefing Document on Ireland's First National Mitigation Plan (CC IECA, 30 January 2017)	30.01.17	Withheld	8 (b) and 9 (2) (d) of the AIE Regulations  The final briefing document on the NMP is available from: <a href="http://www.dccae.gov.ie/en-ie/climate-action/consultations/Documents/4/consultations/National%20Mitigation%20Plan%20Briefing%20Document.pdf">www.dccae.gov.ie/en-ie/climate-action/consultations/Documents/4/consultations/National%20Mitigation%20Plan%20Briefing%20Document.pdf</a>

**Part 6: All reports to Cabinet from 1 January 2017 to date (4 October 2018)**

18.	Memo for Government: Development of Sectoral Adaptation Plans under the Climate Action and Low Carbon Development Act 2015 and new Governance Arrangements to Apply for National Coordination	26.03.18	Withheld	8 (b) and 9 (2) (d) of the AIE Regulations Material outside scope
19.	Memo for Government: Approval and Publication of the National Adaptation Framework	15.12.17	Withheld	8 (b) and 9 (2) (d) of the AIE Regulations Material outside scope
				The NAF is available from: <a href="http://www.dccae.gov.ie/documents/National%20Adaptation%20Framework.pdf">www.dccae.gov.ie/documents/National%20Adaptation%20Framework.pdf</a>
20.	Memo for Government: Publication of Draft National Mitigation Plan	23.06.17	Withheld	8 (b) and 9 (2) (d) of the AIE Regulations Material outside scope
				The NMP is available from: <a href="http://www.dccae.gov.ie/documents/National%20Mitigation%20Plan%202017.pdf">www.dccae.gov.ie/documents/National%20Mitigation%20Plan%202017.pdf</a>
21.	Memo for Government: Publication of Draft National Mitigation Plan for Public Consultation	06.03.17	Withheld	8 (b) and 9 (2) (d) of the AIE Regulations Material outside scope
				As noted above the NMP is available from: <a href="http://www.dccae.gov.ie/documents/National%20Mitigation%20Plan%202017.pdf">www.dccae.gov.ie/documents/National%20Mitigation%20Plan%202017.pdf</a>
22.	Memo for Government: Publication of Briefing Document on the Development of the National Mitigation Plan	27.01.17	Withheld	8 (b) and 9 (2) (d) of the AIE Regulations Material outside scope
				As noted above, the briefing document on the NMP is available from: <a href="http://www.dccae.gov.ie/en-ie/climate-action/consultations/Documents/4/consultations/National%20Mitigation%20Plan%20Briefing%20Document.pdf">www.dccae.gov.ie/en-ie/climate-action/consultations/Documents/4/consultations/National%20Mitigation%20Plan%20Briefing%20Document.pdf</a>

## **Appendix II: AIE request No. 2018/0008 - Public Interest Test**

**Part 1: Identify the membership of the committee including anyone invited to attend who is not formally a member (for example officials or external consultants).**

**Record 1:** Membership of Cabinet Committee D (CC D) which covers, *inter alia*, infrastructure investment, housing, and climate action.

**Summary:** This information is in the public domain.

**Decision:** Release

**Record 2:** Membership of the Cabinet Committee on Infrastructure, Environment & Climate Action (CC IECA).

**Summary:** This information is in the public domain.

**Decision:** Release

### **Part 2: The terms of reference (or similar) for the committee**

**Record 3:** Overview of work of Cabinet Committees

**Summary:** This information is in the public domain.

**Decision:** Release

**Record 4:** Overview of work of CC D

**Summary:** This information is in the public domain.

**Decision:** Release

**Record 5:** Overview of work of CC IECA

**Summary:** This information is in the public domain.

**Decision:** Release

### **Part 3: All agendas for committee meetings from 1 January 2017 to date (4 October 2018)**

**Record 6:** Agenda, CC D, 1 February 2018

**Summary:** Material is outside the scope of the request.

**Decision:** Withhold

**Record 7:** Agenda, CC D, 23 November 2017

**Summary:** Material is outside the scope of the request

**Decision:** Withhold

**Record 8:** Agenda, CC D, 12 September 2017

**Summary:** Material is outside the scope of the request

**Decision:** Withhold

**Record 9:** Agenda, CC IECA, 15 May 2017

**Summary:** The factors I have taken into account in favour of release of those aspects of the record within the scope of the request include:

- The aims of the AIE Directive 2003/4/EC as reflected in the recitals:
  - *“Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.”*
  - *“The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way ...”*
- The need for openness and transparency about how the Government does its work on particular issues, so that decisions made by the Government can be explained and justified to the public at large who are affected by such decisions.
- The release to the public of Cabinet discussions about environmental information can shed light on the factors taken into account by the Government when making decisions.

The factors against release of the record that I have taken into account are as follows:

- Cabinet discussions comprise the internal communications of a public authority. Article 4 of the AIE Directive 2003/4/EC, which has been transposed into Irish law under the AIE regulations, provides that an AIE request may be refused where it concerns internal communications, taking into account the public interest.
- In 1997, the people of Ireland voted to approve the seventeenth amendment of the Constitution which provided that the confidentiality of discussions at meetings of the Government would be respected save only where the High Court, in certain specified circumstances, determines that disclosure should be made i.e. in the interests of the administration of justice by a Court, or by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Oireachtas to inquire into a matter stated by them to be of public importance. The seventeenth amendment is now reflected in article 28.4.3 of the Constitution.

- As the judgement in Attorney General v Hamilton made clear, the protection afforded by article 28.4.3 is to facilitate “*full, free and frank discussion between members of the Government prior to the making of decisions.*”
- Under article 28.4.2 of the Constitution the Government meets and acts as a collective authority and is collectively responsible for the Departments of State administered by the members of the Government. If details of Cabinet discussions are released it could undermine the collective authority of the Government if it were shown that Ministers had opposing views about topics before Government decisions were made. As stated in the Attorney General v Hamilton:
  - *“The obligation to act collectively must, of necessity, involve the making of a single decision on any issue, whether it is arrived at unanimously or by a majority. The obligation to accept collective responsibility for decisions and, presumably, for acts of government as well, involves, as a necessity, the non-disclosure of different or dissenting views held by the members of the Government prior to the making of decisions.”*
  - *“It is clear from the very nature of the collective responsibility of the Government that discussions among its members at their formal meetings must be confidential otherwise its decisions are liable to be fatally weakened by disclosure of dissenting views.... If it were permissible to compel in any circumstances the disclosure of the content of discussions which take place at Government meetings the Executive role of the Government as envisaged by the Constitution would be undermined perhaps even destabilised.”*
- To protect the exercise of collective responsibility a moratorium on the release of Cabinet records should be considered so as to give Ministers some assurance that they can commit views freely to the record and that those views will not automatically be divulged in a relatively short period of time. This principle is reflected in the provision the Oireachtas made in section 28(3)(b) of the Freedom of Information Act 2014 which does not allow for the refusal of access to records relating to a decision of the Government made more than five years before the request was received. This therefore envisages the possibility of withholding records less than 5 years old.
- Whether the cabinet discussions in question in this record add significantly to already publicly available information on the environment, such that the public interest would be best served by disclosure. I note there is already a substantial amount of material in the public domain regarding the National Mitigation Plan (NMP) and the National Adaption Framework (NAF), including detailed content on the Department of Communications, Climate Action and the Environment website and in replies to PQs on these matters. Links to both the NMP and the NAF are provided in the Schedule of Records at Appendix I.

Having fully considered the factors for and against disclosure stated above I consider that the public interest in withholding those aspects of **Record 9** within the scope of the request outweighs the public interest in its disclosure and I am refusing release under articles 8 (b) and 9 (2) (d) of the regulations. In reaching this decision, I have also taken into account the requirements of article 10 (4) of the regulations to interpret the request on a restrictive basis having regard to the public interest served by disclosure. I have also taken article 10 (5) of the regulations into account. I have had particular regard to the fact that the record was created in May 2017.

**Decision:** Withhold

## Record 10: Agenda, CC IECA, 30 January 2017

**Summary:** The factors I have taken into account in favour of release of those aspects of the record within the scope of the request include:

- The aims of the AIE Directive 2003/4/EC as reflected in the recitals:
  - *“Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.”*
  - *“The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way ...”*
- The need for openness and transparency about how the Government does its work on particular issues, so that decisions made by the Government can be explained and justified to the public at large who are affected by such decisions.
- The release to the public of Cabinet discussions about environmental information can shed light on the factors taken into account by the Government when making decisions.

The factors against release of the record that I have taken into account are as follows:

- Cabinet discussions comprise the internal communications of a public authority. Article 4 of the AIE Directive 2003/4/EC, which has been transposed into Irish law under the AIE regulations, provides that an AIE request may be refused where it concerns internal communications, taking into account the public interest.
- In 1997, the people of Ireland voted to approve the seventeenth amendment of the Constitution which provided that the confidentiality of discussions at meetings of the Government would be respected save only where the High Court, in certain specified circumstances, determines that disclosure should be made i.e. in the interests of the administration of justice by a Court, or by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Oireachtas to inquire into a matter stated by them to be of public importance. The seventeenth amendment is now reflected in article 28.4.3 of the Constitution.
- As the judgement in Attorney General v Hamilton made clear, the protection afforded by article 28.4.3 is to facilitate *“full, free and frank discussion between members of the Government prior to the making of decisions.”*
- Under article 28.4.2 of the Constitution the Government meets and acts as a collective authority and is collectively responsible for the Departments of State administered by the members of the Government. If details of Cabinet discussions are released it could undermine the collective authority of the Government if it were shown that Ministers had opposing views about topics before Government decisions were made. As stated in the Attorney General v Hamilton:
  - *“The obligation to act collectively must, of necessity, involve the making of a single decision on any issue, whether it is arrived at unanimously or by a majority. The obligation to accept collective responsibility for decisions and, presumably, for acts of*

*government as well, involves, as a necessity, the non-disclosure of different or dissenting views held by the members of the Government prior to the making of decisions.”*

- *“It is clear from the very nature of the collective responsibility of the Government that discussions among its members at their formal meetings must be confidential otherwise its decisions are liable to be fatally weakened by disclosure of dissenting views.... If it were permissible to compel in any circumstances the disclosure of the content of discussions which take place at Government meetings the Executive role of the Government as envisaged by the Constitution would be undermined perhaps even destabilised.”*
- To protect the exercise of collective responsibility a moratorium on the release of Cabinet records should be considered so as to give Ministers some assurance that they can commit views freely to the record and that those views will not automatically be divulged in a relatively short period of time. This principle is reflected in the provision the Oireachtas made in section 28(3)(b) of the Freedom of Information Act 2014 which does not allow for the refusal of access to records relating to a decision of the Government made more than five years before the request was received. This therefore envisages the possibility of withholding records less than 5 years old.
- Whether the cabinet discussions in question in this record add significantly to already publicly available information on the environment, such that the public interest would be best served by disclosure. I note there is already a substantial amount of material in the public domain regarding the NMP and the NAF, including detailed content on the Department of Communications, Climate Action and the Environment website and in replies to PQs on these matters. Links to both the NMP and the NAF are provided in the Schedule of Records at Appendix I.

Having fully considered the factors for and against disclosure stated above I consider that the public interest in withholding those aspects of **Record 10** within the scope of the request outweighs the public interest in its disclosure and I am refusing release under articles 8 (b) and 9 (2) (d) of the regulations. In reaching this decision, I have also taken into account the requirements of article 10 (4) of the regulations to interpret the request on a restrictive basis having regard to the public interest served by disclosure. I have also taken article 10 (5) of the regulations into account. I have had particular regard to the fact that the record was created in January 2017.

**Decision:** Withhold

#### **Part 4: All meeting minutes from 1 January 2017 to date (4 October 2018)**

**Record 11:** Note, CC D, 1 February 2018

**Summary:** Material is outside the scope of the request

**Decision:** Withhold

**Record 12:** Note, CC D, 23 November 2017

**Summary:** Material is outside the scope of the request

**Decision:** Withhold

**Record 13:** Note, CC D, 12 September 2017

**Summary:** Material is outside the scope of the request

**Decision:** Withhold

**Record 14:** Note, CC IECA, 15 May 2017

**Summary:** The factors I have taken into account in favour of release of those aspects of the record within the scope of the request include:

- The aims of the AIE Directive 2003/4/EC as reflected in the recitals:
  - *“Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.”*
  - *“The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way ....”*
- The need for openness and transparency about how the Government does its work on particular issues, so that decisions made by the Government can be explained and justified to the public at large who are affected by such decisions.
- The release to the public of Cabinet discussions about environmental information can shed light on the factors taken into account by the Government when making decisions.

The factors against release of the record that I have taken into account are as follows:

- Cabinet discussions comprise the internal communications of a public authority. Article 4 of the AIE Directive 2003/4/EC, which has been transposed into Irish law under the AIE regulations, provides that an AIE request may be refused where it concerns internal communications, taking into account the public interest.
- In 1997, the people of Ireland voted to approve the seventeenth amendment of the Constitution which provided that the confidentiality of discussions at meetings of the Government would be respected save only where the High Court, in certain specified circumstances, determines that disclosure should be made i.e. in the interests of the administration of justice by a Court, or by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Oireachtas to inquire into a matter stated by them to be of public importance. The seventeenth amendment is now reflected in article 28.4.3 of the Constitution.

- As the judgement in Attorney General v Hamilton made clear, the protection afforded by article 28.4.3 is to facilitate “*full, free and frank discussion between members of the Government prior to the making of decisions.*”
- Under article 28.4.2 of the Constitution the Government meets and acts as a collective authority and is collectively responsible for the Departments of State administered by the members of the Government. If details of Cabinet discussions are released it could undermine the collective authority of the Government if it were shown that Ministers had opposing views about topics before Government decisions were made. As stated in the Attorney General v Hamilton:
  - *“The obligation to act collectively must, of necessity, involve the making of a single decision on any issue, whether it is arrived at unanimously or by a majority. The obligation to accept collective responsibility for decisions and, presumably, for acts of government as well, involves, as a necessity, the non-disclosure of different or dissenting views held by the members of the Government prior to the making of decisions.”*
  - *“It is clear from the very nature of the collective responsibility of the Government that discussions among its members at their formal meetings must be confidential otherwise its decisions are liable to be fatally weakened by disclosure of dissenting views.... If it were permissible to compel in any circumstances the disclosure of the content of discussions which take place at Government meetings the Executive role of the Government as envisaged by the Constitution would be undermined perhaps even destabilised.”*
- To protect the exercise of collective responsibility a moratorium on the release of Cabinet records should be considered so as to give Ministers some assurance that they can commit views freely to the record and that those views will not automatically be divulged in a relatively short period of time. This principle is reflected in the provision the Oireachtas made in section 28(3)(b) of the Freedom of Information Act 2014 which does not allow for the refusal of access to records relating to a decision of the Government made more than five years before the request was received. This therefore envisages the possibility of withholding records less than 5 years old.
- Whether the cabinet discussions in question in this record add significantly to already publicly available information on the environment, such that the public interest would be best served by disclosure. I note there is already a substantial amount of material in the public domain regarding the NMP and the NAF, including detailed content on the Department of Communications, Climate Action and the Environment website and in replies to PQs on these matters. Links to both the NMP and the NAF are provided in the Schedule of Records at Appendix I.

Having fully considered the factors for and against disclosure stated above I consider that the public interest in withholding those aspects of **Record 14** within the scope of the request outweighs the public interest in its disclosure and I am refusing release under articles 8 (b) and 9 (2) (d) of the regulations. In reaching this decision, I have also taken into account the requirements of article 10 (4) of the regulations to interpret the request on a restrictive basis having regard to the public interest served by disclosure. I have also taken article 10 (5) of the regulations into account. I have had particular regard to the fact that the record was created in May 2017.

**Decision:** Withhold

**Record 15:** Note, CC IECA, 30 January 2017

**Summary:** The factors I have taken into account in favour of release of those aspects of the record within the scope of the request include:

- The aims of the AIE Directive 2003/4/EC as reflected in the recitals:
  - *“Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.”*
  - *“The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way ...”*
- The need for openness and transparency about how the Government does its work on particular issues, so that decisions made by the Government can be explained and justified to the public at large who are affected by such decisions.
- The release to the public of Cabinet discussions about environmental information can shed light on the factors taken into account by the Government when making decisions.

The factors against release of the record that I have taken into account are as follows:

- Cabinet discussions comprise the internal communications of a public authority. Article 4 of the AIE Directive 2003/4/EC, which has been transposed into Irish law under the AIE regulations, provides that an AIE request may be refused where it concerns internal communications, taking into account the public interest.
- In 1997, the people of Ireland voted to approve the seventeenth amendment of the Constitution which provided that the confidentiality of discussions at meetings of the Government would be respected save only where the High Court, in certain specified circumstances, determines that disclosure should be made i.e. in the interests of the administration of justice by a Court, or by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Oireachtas to inquire into a matter stated by them to be of public importance. The seventeenth amendment is now reflected in article 28.4.3 of the Constitution.
- As the judgement in Attorney General v Hamilton made clear, the protection afforded by article 28.4.3 is to facilitate *“full, free and frank discussion between members of the Government prior to the making of decisions.”*
- Under article 28.4.2 of the Constitution the Government meets and acts as a collective authority and is collectively responsible for the Departments of State administered by the members of the Government. If details of Cabinet discussions are released it could undermine the collective authority of the Government if it were shown that Ministers had opposing views about topics before Government decisions were made. As stated in the Attorney General v Hamilton:
  - *“The obligation to act collectively must, of necessity, involve the making of a single decision on any issue, whether it is arrived at unanimously or by a majority. The obligation to accept collective responsibility for decisions and, presumably, for acts of government as well, involves, as a necessity, the non-disclosure of different or*

*dissenting views held by the members of the Government prior to the making of decisions.”*

- *“It is clear from the very nature of the collective responsibility of the Government that discussions among its members at their formal meetings must be confidential otherwise its decisions are liable to be fatally weakened by disclosure of dissenting views.... If it were permissible to compel in any circumstances the disclosure of the content of discussions which take place at Government meetings the Executive role of the Government as envisaged by the Constitution would be undermined perhaps even destabilised.”*
- To protect the exercise of collective responsibility a moratorium on the release of Cabinet records should be considered so as to give Ministers some assurance that they can commit views freely to the record and that those views will not automatically be divulged in a relatively short period of time. This principle is reflected in the provision the Oireachtas made in section 28(3)(b) of the Freedom of Information Act 2014 which does not allow for the refusal of access to records relating to a decision of the Government made more than five years before the request was received. This therefore envisages the possibility of withholding records less than 5 years old.
- Whether the cabinet discussions in question in this record add significantly to already publicly available information on the environment, such that the public interest would be best served by disclosure. I note there is already a substantial amount of material in the public domain regarding the NMP and the NAF, including detailed content on the Department of Communications, Climate Action and the Environment website and in replies to PQs on these matters. Links to both the NMP and the NAF are provided in the Schedule of Records at Appendix I.

Having fully considered the factors for and against disclosure stated above I consider that the public interest in withholding those aspects of **Record 15** within the scope of the request outweighs the public interest in its disclosure and I am refusing release under articles 8 (b) and 9 (2) (d) of the regulations. In reaching this decision, I have also taken into account the requirements of article 10 (4) of the regulations to interpret the request on a restrictive basis having regard to the public interest served by disclosure. I have also taken article 10 (5) of the regulations into account. I have had particular regard to the fact that the record was created in January 2017.

**Decision:** Withhold

**Part 5: All reports, presentations and other documents that have been considered by the committee from 1 January 2017 to date (4 October 2018)**

**Record 16:** National Mitigation Plan Update (CC IECA, 15 May 2017)

**Summary:** The factors I have taken into account in favour of release of this record include:

- The aims of the AIE Directive 2003/4/EC as reflected in the recitals:
  - *“Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.”*

- “*The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way ...*”
- The need for openness and transparency about how the Government does its work on particular issues, so that decisions made by the Government can be explained and justified to the public at large who are affected by such decisions.
- The release to the public of Cabinet discussions about environmental information can shed light on the factors taken into account by the Government when making decisions.

The factors against release of the record that I have taken into account are as follows:

- Cabinet discussions comprise the internal communications of a public authority. Article 4 of the AIE Directive 2003/4/EC, which has been transposed into Irish law under the AIE regulations, provides that an AIE request may be refused where it concerns internal communications, taking into account the public interest.
- In 1997, the people of Ireland voted to approve the seventeenth amendment of the Constitution which provided that the confidentiality of discussions at meetings of the Government would be respected save only where the High Court, in certain specified circumstances, determines that disclosure should be made i.e. in the interests of the administration of justice by a Court, or by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Oireachtas to inquire into a matter stated by them to be of public importance. The seventeenth amendment is now reflected in article 28.4.3 of the Constitution.
- As the judgement in Attorney General v Hamilton made clear, the protection afforded by article 28.4.3 is to facilitate “*full, free and frank discussion between members of the Government prior to the making of decisions.*”
- Under article 28.4.2 of the Constitution the Government meets and acts as a collective authority and is collectively responsible for the Departments of State administered by the members of the Government. If details of Cabinet discussions are released it could undermine the collective authority of the Government if it were shown that Ministers had opposing views about topics before Government decisions were made. As stated in the Attorney General v Hamilton:
  - “*The obligation to act collectively must, of necessity, involve the making of a single decision on any issue, whether it is arrived at unanimously or by a majority. The obligation to accept collective responsibility for decisions and, presumably, for acts of government as well, involves, as a necessity, the non-disclosure of different or dissenting views held by the members of the Government prior to the making of decisions.*”
  - “*It is clear from the very nature of the collective responsibility of the Government that discussions among its members at their formal meetings must be confidential otherwise its decisions are liable to be fatally weakened by disclosure of dissenting views.... If it were permissible to compel in any circumstances the disclosure of the content of discussions which take place at Government meetings the Executive role of the Government as envisaged by the Constitution would be undermined perhaps even destabilised.*”

- To protect the exercise of collective responsibility a moratorium on the release of Cabinet records should be considered so as to give Ministers some assurance that they can commit views freely to the record and that those views will not automatically be divulged in a relatively short period of time. This principle is reflected in the provision the Oireachtas made in section 28(3)(b) of the Freedom of Information Act 2014 which does not allow for the refusal of access to records relating to a decision of the Government made more than five years before the request was received. This therefore envisages the possibility of withholding records less than 5 years old.
- Whether the cabinet discussions in question in this record add significantly to already publicly available information on the environment, such that the public interest would be best served by disclosure. I note there is already a substantial amount of material in the public domain regarding the NMP and the NAF, including detailed content on the Department of Communications, Climate Action and the Environment website and in replies to PQs on these matters. Links to both the NMP and the NAF are provided in the Schedule of Records at Appendix I.

Having fully considered the factors for and against disclosure stated above I consider that the public interest in withholding **Record 16** outweighs the public interest in its disclosure and I am refusing release under articles 8 (b) and 9 (2) (d) of the regulations. In reaching this decision, I have also taken into account the requirements of article 10 (4) of the regulations to interpret the request on a restrictive basis having regard to the public interest served by disclosure. I have also taken article 10 (5) of the regulations into account. I have had particular regard to the fact that the record was created in May 2017.

**Decision:** Withhold

**Record 17:** Briefing Document on Ireland's First National Mitigation Plan (CC IECA, 30 January 2017)

**Summary:** The factors I have taken into account in favour of release of those aspects of the record within the scope of the request include:

- The aims of the AIE Directive 2003/4/EC as reflected in the recitals:
  - *“Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.”*
  - *“The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way ...”*
- The need for openness and transparency about how the Government does its work on particular issues, so that decisions made by the Government can be explained and justified to the public at large who are affected by such decisions.
- The release to the public of Cabinet discussions about environmental information can shed light on the factors taken into account by the Government when making decisions.

The factors against release of the record that I have taken into account are as follows:

- Cabinet discussions comprise the internal communications of a public authority. Article 4 of the AIE Directive 2003/4/EC, which has been transposed into Irish law under the AIE regulations, provides that an AIE request may be refused where it concerns internal communications, taking into account the public interest.
- In 1997, the people of Ireland voted to approve the seventeenth amendment of the Constitution which provided that the confidentiality of discussions at meetings of the Government would be respected save only where the High Court, in certain specified circumstances, determines that disclosure should be made i.e. in the interests of the administration of justice by a Court, or by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Oireachtas to inquire into a matter stated by them to be of public importance. The seventeenth amendment is now reflected in article 28.4.3 of the Constitution.
- As the judgement in Attorney General v Hamilton made clear, the protection afforded by article 28.4.3 is to facilitate *“full, free and frank discussion between members of the Government prior to the making of decisions.”*
- Under article 28.4.2 of the Constitution the Government meets and acts as a collective authority and is collectively responsible for the Departments of State administered by the members of the Government. If details of Cabinet discussions are released it could undermine the collective authority of the Government if it were shown that Ministers had opposing views about topics before Government decisions were made. As stated in the Attorney General v Hamilton:
  - *“The obligation to act collectively must, of necessity, involve the making of a single decision on any issue, whether it is arrived at unanimously or by a majority. The obligation to accept collective responsibility for decisions and, presumably, for acts of government as well, involves, as a necessity, the non-disclosure of different or dissenting views held by the members of the Government prior to the making of decisions.”*
  - *“It is clear from the very nature of the collective responsibility of the Government that discussions among its members at their formal meetings must be confidential otherwise its decisions are liable to be fatally weakened by disclosure of dissenting views.... If it were permissible to compel in any circumstances the disclosure of the content of discussions which take place at Government meetings the Executive role of the Government as envisaged by the Constitution would be undermined perhaps even destabilised.”*
- To protect the exercise of collective responsibility a moratorium on the release of Cabinet records should be considered so as to give Ministers some assurance that they can commit views freely to the record and that those views will not automatically be divulged in a relatively short period of time. This principle is reflected in the provision the Oireachtas made in section 28(3)(b) of the Freedom of Information Act 2014 which does not allow for the refusal of access to records relating to a decision of the Government made more than five years before the request was received. This therefore envisages the possibility of withholding records less than 5 years old.
- Whether the cabinet discussions in question in this record add significantly to already publicly available information on the environment, such that the public interest would be

best served by disclosure. I note there is already a substantial amount of material in the public domain regarding the NMP and the NAF, including detailed content on the Department of Communications, Climate Action and the Environment website and in replies to PQs on these matters. Links to both the NMP and the NAF are provided in the Schedule of Records at Appendix I.

Having fully considered the factors for and against disclosure stated above I consider that the public interest in withholding those aspects of **Record 17** within the scope of the request outweighs the public interest in its disclosure and I am refusing release under articles 8 (b) and 9 (2) (d) of the regulations. In reaching this decision, I have also taken into account the requirements of article 10 (4) of the regulations to interpret the request on a restrictive basis having regard to the public interest served by disclosure. I have also taken article 10 (5) of the regulations into account. I have had particular regard to the fact that the record was created in January 2017.

**Decision:** Withhold

#### **Part 6: All reports to Cabinet from 1 January 2017 to date (4 October 2018)**

**Record 18:** Memo for Government: Development of Sectoral Adaptation Plans under the Climate Action and Low Carbon Development Act 2015 and new Governance Arrangements to Apply for National Coordination (26 March 2018)

**Summary:** The factors I have taken into account in favour of release of those elements of this records which are within scope include:

- The aims of the AIE Directive 2003/4/EC as reflected in the recitals:
  - *“Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.”*
  - *“The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way...”*
- The need for openness and transparency about how the Government does its work on particular issues, so that decisions made by the Government can be explained and justified to the public at large who are affected by such decisions.
- The release to the public of Cabinet discussions about environmental information can shed light on the factors taken into account by the Government when making decisions.

Conversely, the factors against release of this record that should be taken into account are as follows:

- The Memorandum for the Government as well as the Cabinet discussions included within it comprise the internal communications of a public authority. Article 4 of the AIE Directive 2003/4/EC, which has been transposed into Irish law under the AIE regulations, provides that an AIE request may be refused where it concerns internal communications, taking into account the public interest.

- In 1997, the people of Ireland voted to approve the seventeenth amendment of the Constitution which provided that the confidentiality of discussions at meetings of the Government would be respected save only where the High Court, in certain specified circumstances, determines that disclosure should be made i.e. in the interests of the administration of justice by a Court, or by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Oireachtas to inquire into a matter stated by them to be of public importance. The seventeenth amendment is now reflected in article 28.4.3 of the Constitution.
- As the judgement in Attorney General v Hamilton made clear, the protection afforded by article 28.4.3 is to facilitate *“full, free and frank discussion between members of the Government prior to the making of decisions.”*
- Under article 28.4.2 of the Constitution the Government meets and acts as a collective authority and is collectively responsible for the Departments of State administered by the members of the Government. If details of Cabinet discussions are released it could undermine the collective authority of the Government if it were shown that Ministers had opposing views about topics before Government decisions were made. As stated in the Attorney General v Hamilton:
  - *“The obligation to act collectively must, of necessity, involve the making of a single decision on any issue, whether it is arrived at unanimously or by a majority. The obligation to accept collective responsibility for decisions and, presumably, for acts of government as well, involves, as a necessity, the non-disclosure of different or dissenting views held by the members of the Government prior to the making of decisions.”*
  - *“It is clear from the very nature of the collective responsibility of the Government that discussions among its members at their formal meetings must be confidential otherwise its decisions are liable to be fatally weakened by disclosure of dissenting views.... If it were permissible to compel in any circumstances the disclosure of the content of discussions which take place at Government meetings the Executive role of the Government as envisaged by the Constitution would be undermined perhaps even destabilised.”*
- To protect the exercise of collective responsibility a moratorium on the release of Cabinet records is required as this gives Ministers the assurance that they require to commit views freely to the record and not have those views divulged in a relatively short period of time. This principle is reflected in the provision the Oireachtas made in section 28(3)(b) of the Freedom of Information Act 2014 which does not allow for the refusal of access to records relating to a decision of the Government made more than five years before the request was received. This therefore envisages the withholding of records less than 5 years old.
- Whether the cabinet discussions in question in this record add significantly to already publicly available information on the environment, such that the public interest would be best served by disclosure. I note there is already a substantial amount of material in the public domain regarding the NMP and the NAF, including detailed content on the Department of Communications, Climate Action and the Environment website and in replies to PQs on these matters. Links to both the NMP and the NAF are provided in the Schedule of Records at Appendix I.

Having fully considered the factors for and against disclosure stated above, I consider that the public interest in withholding this record outweighs the public interest in its disclosure and that the request for this record should be refused under articles 8 (b) and 9 (2) (d) of the regulations.

In reaching this view, I have also taken into account the requirements of Article 10 (3) to consider each record on an individual basis and weigh the public interest served by disclosure against the public interest served by refusal. In addition, I have considered article 10 (4) of the regulations to interpret the request on a restrictive basis having regard to the public interest served by disclosure and I have taken article 10 (5) of the regulations into account. I have also taken account that this record has been created over the past five years.

**Decision:** Withhold

**Record 19:** Memo for Government: Approval and Publication of the National Adaptation Framework (15 December 2017)

**Summary:** The factors I have taken into account in favour of release of those elements of this records which are within scope include:

- The aims of the AIE Directive 2003/4/EC as reflected in the recitals:
  - *“Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.”*
  - *“The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way...”*
- The need for openness and transparency about how the Government does its work on particular issues, so that decisions made by the Government can be explained and justified to the public at large who are affected by such decisions.
- The release to the public of Cabinet discussions about environmental information can shed light on the factors taken into account by the Government when making decisions.

Conversely, the factors against release of this record that should be taken into account are as follows:

- The Memorandum for the Government as well as the Cabinet discussions included within it comprise the internal communications of a public authority. Article 4 of the AIE Directive 2003/4/EC, which has been transposed into Irish law under the AIE regulations, provides that an AIE request may be refused where it concerns internal communications, taking into account the public interest.
- In 1997, the people of Ireland voted to approve the seventeenth amendment of the Constitution which provided that the confidentiality of discussions at meetings of the Government would be respected save only where the High Court, in certain specified circumstances, determines that disclosure should be made i.e. in the interests of the administration of justice by a Court, or by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Oireachtas to inquire into a matter stated by them

to be of public importance. The seventeenth amendment is now reflected in article 28.4.3 of the Constitution.

- As the judgement in Attorney General v Hamilton made clear, the protection afforded by article 28.4.3 is to facilitate “*full, free and frank discussion between members of the Government prior to the making of decisions.*”
- Under article 28.4.2 of the Constitution the Government meets and acts as a collective authority and is collectively responsible for the Departments of State administered by the members of the Government. If details of Cabinet discussions are released it could undermine the collective authority of the Government if it were shown that Ministers had opposing views about topics before Government decisions were made. As stated in the Attorney General v Hamilton:
  - *“The obligation to act collectively must, of necessity, involve the making of a single decision on any issue, whether it is arrived at unanimously or by a majority. The obligation to accept collective responsibility for decisions and, presumably, for acts of government as well, involves, as a necessity, the non-disclosure of different or dissenting views held by the members of the Government prior to the making of decisions.”*
  - *“It is clear from the very nature of the collective responsibility of the Government that discussions among its members at their formal meetings must be confidential otherwise its decisions are liable to be fatally weakened by disclosure of dissenting views.... If it were permissible to compel in any circumstances the disclosure of the content of discussions which take place at Government meetings the Executive role of the Government as envisaged by the Constitution would be undermined perhaps even destabilised.”*
- To protect the exercise of collective responsibility a moratorium on the release of Cabinet records is required as this gives Ministers the assurance that they require to commit views freely to the record and not have those views divulged in a relatively short period of time. This principle is reflected in the provision the Oireachtas made in section 28(3)(b) of the Freedom of Information Act 2014 which does not allow for the refusal of access to records relating to a decision of the Government made more than five years before the request was received. This therefore envisages the withholding of records less than 5 years old.
- Whether the cabinet discussions in question in this record add significantly to already publicly available information on the environment, such that the public interest would be best served by disclosure. I note there is already a substantial amount of material in the public domain regarding the NMP and the NAF, including detailed content on the Department of Communications, Climate Action and the Environment website and in replies to PQs on these matters. Links to both the NMP and the NAF are provided in the Schedule of Records at Appendix I.

Having fully considered the factors for and against disclosure stated above, I consider that the public interest in withholding this record outweighs the public interest in its disclosure and that the request for this record should be refused under articles 8 (b) and 9 (2) (d) of the regulations.

In reaching this view, I have also taken into account the requirements of Article 10 (3) to consider each record on an individual basis and weigh the public interest served by disclosure against the public interest served by refusal. In addition, I have considered article 10 (4) of the regulations to interpret the request on a restrictive basis having regard to the public

interest served by disclosure and I have taken article 10 (5) of the regulations into account. I have also taken account that this record has been created over the past five years.

**Decision:** Withhold

**Record 20:** Memo for Government: Publication of Draft National Mitigation Plan (23 June 2017)

**Summary:** The factors I have taken into account in favour of release of those elements of this records which are within scope include:

- The aims of the AIE Directive 2003/4/EC as reflected in the recitals:
  - *“Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.”*
  - *“The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way...”*
- The need for openness and transparency about how the Government does its work on particular issues, so that decisions made by the Government can be explained and justified to the public at large who are affected by such decisions.
- The release to the public of Cabinet discussions about environmental information can shed light on the factors taken into account by the Government when making decisions.

Conversely, the factors against release of this record that should be taken into account are as follows:

- The Memorandum for the Government as well as the Cabinet discussions included within it comprise the internal communications of a public authority. Article 4 of the AIE Directive 2003/4/EC, which has been transposed into Irish law under the AIE regulations, provides that an AIE request may be refused where it concerns internal communications, taking into account the public interest.
- In 1997, the people of Ireland voted to approve the seventeenth amendment of the Constitution which provided that the confidentiality of discussions at meetings of the Government would be respected save only where the High Court, in certain specified circumstances, determines that disclosure should be made i.e. in the interests of the administration of justice by a Court, or by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Oireachtas to inquire into a matter stated by them to be of public importance. The seventeenth amendment is now reflected in article 28.4.3 of the Constitution.
- As the judgement in Attorney General v Hamilton made clear, the protection afforded by article 28.4.3 is to facilitate *“full, free and frank discussion between members of the Government prior to the making of decisions.”*
- Under article 28.4.2 of the Constitution the Government meets and acts as a collective authority and is collectively responsible for the Departments of State administered by the

members of the Government. If details of Cabinet discussions are released it could undermine the collective authority of the Government if it were shown that Ministers had opposing views about topics before Government decisions were made. As stated in the Attorney General v Hamilton:

- *"The obligation to act collectively must, of necessity, involve the making of a single decision on any issue, whether it is arrived at unanimously or by a majority. The obligation to accept collective responsibility for decisions and, presumably, for acts of government as well, involves, as a necessity, the non-disclosure of different or dissenting views held by the members of the Government prior to the making of decisions."*
- *"It is clear from the very nature of the collective responsibility of the Government that discussions among its members at their formal meetings must be confidential otherwise its decisions are liable to be fatally weakened by disclosure of dissenting views.... If it were permissible to compel in any circumstances the disclosure of the content of discussions which take place at Government meetings the Executive role of the Government as envisaged by the Constitution would be undermined perhaps even destabilised."*
- To protect the exercise of collective responsibility a moratorium on the release of Cabinet records is required as this gives Ministers the assurance that they require to commit views freely to the record and not have those views divulged in a relatively short period of time. This principle is reflected in the provision the Oireachtas made in section 28(3)(b) of the Freedom of Information Act 2014 which does not allow for the refusal of access to records relating to a decision of the Government made more than five years before the request was received. This therefore envisages the withholding of records less than 5 years old.
- Whether the cabinet discussions in question in this record add significantly to already publicly available information on the environment, such that the public interest would be best served by disclosure. I note there is already a substantial amount of material in the public domain regarding the NMP and the NAF, including detailed content on the Department of Communications, Climate Action and the Environment website and in replies to PQs on these matters. Links to both the NMP and the NAF are provided in the Schedule of Records at Appendix I.

Having fully considered the factors for and against disclosure stated above, I consider that the public interest in withholding this record outweighs the public interest in its disclosure and that the request for this record should be refused under articles 8 (b) and 9 (2) (d) of the regulations.

In reaching this view, I have also taken into account the requirements of Article 10 (3) to consider each record on an individual basis and weigh the public interest served by disclosure against the public interest served by refusal. In addition, I have considered article 10 (4) of the regulations to interpret the request on a restrictive basis having regard to the public interest served by disclosure and I have taken article 10 (5) of the regulations into account. I have also taken account that this record has been created over the past five years.

**Decision:** Withhold

**Record 21:** Memo for Government: Publication of Draft National Mitigation Plan for Public Consultation (6 March 2017)

**Summary:** The factors I have taken into account in favour of release of those elements of this records which are within scope include:

- The aims of the AIE Directive 2003/4/EC as reflected in the recitals:
  - *“Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.”*
  - *“The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way...”*
- The need for openness and transparency about how the Government does its work on particular issues, so that decisions made by the Government can be explained and justified to the public at large who are affected by such decisions.
- The release to the public of Cabinet discussions about environmental information can shed light on the factors taken into account by the Government when making decisions.

Conversely, the factors against release of this record that should be taken into account are as follows:

- The Memorandum for the Government as well as the Cabinet discussions included within it comprise the internal communications of a public authority. Article 4 of the AIE Directive 2003/4/EC, which has been transposed into Irish law under the AIE regulations, provides that an AIE request may be refused where it concerns internal communications, taking into account the public interest.
- In 1997, the people of Ireland voted to approve the seventeenth amendment of the Constitution which provided that the confidentiality of discussions at meetings of the Government would be respected save only where the High Court, in certain specified circumstances, determines that disclosure should be made i.e. in the interests of the administration of justice by a Court, or by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Oireachtas to inquire into a matter stated by them to be of public importance. The seventeenth amendment is now reflected in article 28.4.3 of the Constitution.
- As the judgement in *Attorney General v Hamilton* made clear, the protection afforded by article 28.4.3 is to facilitate *“full, free and frank discussion between members of the Government prior to the making of decisions.”*
- Under article 28.4.2 of the Constitution the Government meets and acts as a collective authority and is collectively responsible for the Departments of State administered by the members of the Government. If details of Cabinet discussions are released it could undermine the collective authority of the Government if it were shown that Ministers had opposing views about topics before Government decisions were made. As stated in the *Attorney General v Hamilton*:

- *“The obligation to act collectively must, of necessity, involve the making of a single decision on any issue, whether it is arrived at unanimously or by a majority. The obligation to accept collective responsibility for decisions and, presumably, for acts of government as well, involves, as a necessity, the non-disclosure of different or dissenting views held by the members of the Government prior to the making of decisions.”*
- *“It is clear from the very nature of the collective responsibility of the Government that discussions among its members at their formal meetings must be confidential otherwise its decisions are liable to be fatally weakened by disclosure of dissenting views..... If it were permissible to compel in any circumstances the disclosure of the content of discussions which take place at Government meetings the Executive role of the Government as envisaged by the Constitution would be undermined perhaps even destabilised.”*
- To protect the exercise of collective responsibility a moratorium on the release of Cabinet records is required as this gives Ministers the assurance that they require to commit views freely to the record and not have those views divulged in a relatively short period of time. This principle is reflected in the provision the Oireachtas made in section 28(3)(b) of the Freedom of Information Act 2014 which does not allow for the refusal of access to records relating to a decision of the Government made more than five years before the request was received. This therefore envisages the withholding of records less than 5 years old.
- Whether the cabinet discussions in question in this record add significantly to already publicly available information on the environment, such that the public interest would be best served by disclosure. I note there is already a substantial amount of material in the public domain regarding the NMP and the NAF, including detailed content on the Department of Communications, Climate Action and the Environment website and in replies to PQs on these matters. Links to both the NMP and the NAF are provided in the Schedule of Records at Appendix I.

Having fully considered the factors for and against disclosure stated above, I consider that the public interest in withholding this record outweighs the public interest in its disclosure and that the request for this record should be refused under articles 8 (b) and 9 (2) (d) of the regulations.

In reaching this view, I have also taken into account the requirements of Article 10 (3) to consider each record on an individual basis and weigh the public interest served by disclosure against the public interest served by refusal. In addition, I have considered article 10 (4) of the regulations to interpret the request on a restrictive basis having regard to the public interest served by disclosure and I have taken article 10 (5) of the regulations into account. I have also taken account that this record has been created over the past five years.

**Decision:** Withhold

**Record 22:** Memo for Government: Publication of Briefing Documents on the Development of the National Mitigation Plan (27 December 2017)

**Summary:** The factors I have taken into account in favour of release of those elements of this records which are within scope include:

- The aims of the AIE Directive 2003/4/EC as reflected in the recitals:
  - *“Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.”*
  - *“The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way...”*
- The need for openness and transparency about how the Government does its work on particular issues, so that decisions made by the Government can be explained and justified to the public at large who are affected by such decisions.
- The release to the public of Cabinet discussions about environmental information can shed light on the factors taken into account by the Government when making decisions.

Conversely, the factors against release of this record that should be taken into account are as follows:

- The Memorandum for the Government as well as the Cabinet discussions included within it comprise the internal communications of a public authority. Article 4 of the AIE Directive 2003/4/EC, which has been transposed into Irish law under the AIE regulations, provides that an AIE request may be refused where it concerns internal communications, taking into account the public interest.
- In 1997, the people of Ireland voted to approve the seventeenth amendment of the Constitution which provided that the confidentiality of discussions at meetings of the Government would be respected save only where the High Court, in certain specified circumstances, determines that disclosure should be made i.e. in the interests of the administration of justice by a Court, or by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Oireachtas to inquire into a matter stated by them to be of public importance. The seventeenth amendment is now reflected in article 28.4.3 of the Constitution.
- As the judgement in Attorney General v Hamilton made clear, the protection afforded by article 28.4.3 is to facilitate *“full, free and frank discussion between members of the Government prior to the making of decisions.”*
- Under article 28.4.2 of the Constitution the Government meets and acts as a collective authority and is collectively responsible for the Departments of State administered by the members of the Government. If details of Cabinet discussions are released it could undermine the collective authority of the Government if it were shown that Ministers had opposing views about topics before Government decisions were made. As stated in the Attorney General v Hamilton:

- *"The obligation to act collectively must, of necessity, involve the making of a single decision on any issue, whether it is arrived at unanimously or by a majority. The obligation to accept collective responsibility for decisions and, presumably, for acts of government as well, involves, as a necessity, the non-disclosure of different or dissenting views held by the members of the Government prior to the making of decisions."*
- *"It is clear from the very nature of the collective responsibility of the Government that discussions among its members at their formal meetings must be confidential otherwise its decisions are liable to be fatally weakened by disclosure of dissenting views.... If it were permissible to compel in any circumstances the disclosure of the content of discussions which take place at Government meetings the Executive role of the Government as envisaged by the Constitution would be undermined perhaps even destabilised."*
- To protect the exercise of collective responsibility a moratorium on the release of Cabinet records is required as this gives Ministers the assurance that they require to commit views freely to the record and not have those views divulged in a relatively short period of time. This principle is reflected in the provision the Oireachtas made in section 28(3)(b) of the Freedom of Information Act 2014 which does not allow for the refusal of access to records relating to a decision of the Government made more than five years before the request was received. This therefore envisages the withholding of records less than 5 years old.
- Whether the cabinet discussions in question in this record add significantly to already publicly available information on the environment, such that the public interest would be best served by disclosure. I note there is already a substantial amount of material in the public domain regarding the NMP and the NAF, including detailed content on the Department of Communications, Climate Action and the Environment website and in replies to PQs on these matters. Links to both the NMP and the NAF are provided in the Schedule of Records at Appendix I.

Having fully considered the factors for and against disclosure stated above, I consider that the public interest in withholding this record outweighs the public interest in its disclosure and that the request for this record should be refused under articles 8 (b) and 9 (2) (d) of the regulations.

In reaching this view, I have also taken into account the requirements of Article 10 (3) to consider each record on an individual basis and weigh the public interest served by disclosure against the public interest served by refusal. In addition, I have considered article 10 (4) of the regulations to interpret the request on a restrictive basis having regard to the public interest served by disclosure and I have taken article 10 (5) of the regulations into account. I have also taken account that this record has been created over the past five years.

**Decision:** Withhold

## **Membership: Cabinet Committee D – Infrastructure**

Established in July 2017, membership of the Committee is as follows:

Taoiseach (Chair)

Tánaiste and Minister for Foreign Affairs and Trade

Minister for Agriculture, Food and the Marine

Minister for Communications, Climate Action and the Environment

Minister for Employment and Social Protection

Minister for Enterprise and Innovation

Minister for Finance and Public Expenditure and Reform

Minister for Housing, Planning and Local Government

Minister for Transport, Tourism and Sport

Minister of State for Housing and Urban Development

Available from:

[www.taoiseach.gov.ie/DOT/eng/Taoiseach\\_and\\_Government/Cabinet\\_Committees/Cabinet\\_Committee\\_D\\_Infrastructure.html](http://www.taoiseach.gov.ie/DOT/eng/Taoiseach_and_Government/Cabinet_Committees/Cabinet_Committee_D_Infrastructure.html)

**Membership: Cabinet Committee on Infrastructure, Environment and Climate Action**

Established in May 2016, membership of the Committee was as follows:

Taoiseach (Chair)

Tánaiste and Minister for Justice and Equality

Minister for Agriculture, Food and the Marine

Minister for Communications, Climate Change and Environment

Minister for Finance

Minister for Foreign Affairs and Trade

Minister for Housing, Planning and Local Government

Minister for Jobs, Enterprise and Innovation

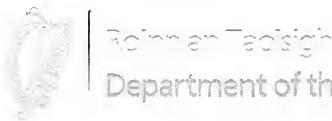
Minister for Public Expenditure and Reform

Minister for Regional Development Rural Affairs, Arts and the Gaeltacht

Minister for Transport, Tourism and Sport

Minister of State for Housing and Urban Renewal

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## Cabinet Committees of the 31st Government

The Government may establish Cabinet Committees to assist it in carrying out its responsibilities and the Department of the Taoiseach is responsible for the management of such Committees. Cabinet Committees derive their authority from Government. Cabinet Committees have a membership comprising two or more members of Government and may also include the Attorney General and Ministers of State.

Reflecting the Government's national priorities, the current Cabinet Committees are:

- › [A \(Economy\)](#)
- › [B \(Social Policy and Public Services\)](#)
- › [C \(European Union including Brexit\)](#)
- › [D \(Infrastructure\)](#)
- › [E \(Health\)](#)

Cabinet Committees are chaired by the Taoiseach. The Secretary of each Cabinet Committee is an official of the Department of the Taoiseach (normally at Second Secretary / Assistant Secretary level) appointed by the Secretary General to the Government and briefs the Taoiseach on policy areas relevant to the work of that Committee. The Secretary also chairs any Senior Officials' Group that is established to support the work of the Cabinet Committee. The Senior Officials' Groups usually meet in advance of Cabinet Committee meetings but can also provide cross-departmental coordination on relevant issues not requiring formal consideration at a Cabinet Committee.

Cabinet Committees refer substantive issues to Government for approval except where a Committee has been expressly mandated by the Government to take a decision. All Cabinet Committees stand dissolved at the end of a Government's term in office. Committees also stand dissolved on producing a final report to Government, having discharged their remit.

Outside of the structure of Government and Cabinet Committee meetings, interaction between the Department of the Taoiseach and the Taoiseach, Tánaiste and Ministers of State assigned to the Department can occur routinely at any time and is not confined to normal working hours and normal office arrangements. These arrangements derive from the nature of the work of the Department and the working style of office holders.

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**Extract: Oral reply to PQ on Cabinet Committee D (Infrastructure), 23 October 2018**

**Available from:** [www.oireachtas.ie/en/debates/debate/dail/2018-10-24/17/#s19](http://www.oireachtas.ie/en/debates/debate/dail/2018-10-24/17/#s19)

The relevant section outlining the work of CC D is highlighted below.

Cabinet Committee Meetings

Joan Burton

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Joan Burton

Question: 5. Deputy Joan Burton asked the Taoiseach when Cabinet committee D (infrastructure) last met. [38376/18]

Brendan Howlin

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Brendan Howlin

Question: 6. Deputy Brendan Howlin asked the Taoiseach when Cabinet committee D (infrastructure) last met; and when it will next meet. [39448/18]

Micheál Martin

*Share*

Micheál Martin

Question: 7. Deputy Micheál Martin asked the Taoiseach the frequency with which Cabinet committee D (infrastructure) met in 2017 and to date in 2018. [41072/18]

Peter Burke

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Peter Burke

Question: 8. Deputy Peter Burke asked the Taoiseach when Cabinet committee D (infrastructure) last met. [41817/18]

Richard Boyd Barrett

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Richard Boyd Barrett

Question:

9. Deputy Richard Boyd Barrett asked the Taoiseach when Cabinet committee D (infrastructure) last met. [43454/18]

## The Taoiseach

*Share*

I propose to take Questions Nos. 5 to 9, inclusive, together.

Following its establishment in July last year, Cabinet committee D met twice in 2017 on 2 September and 23 November. The Committee last met on 1 February to help us finalise Project Ireland 2040 and its next meeting is scheduled for 15 November. *It works to ensure a co-ordinated approach to the delivery and development of policy in infrastructure investment, housing, and climate action.* There is significant work under way in each of these areas across Departments and Government agencies, including through regular discussion of these matters at meetings of the Cabinet

In particular, Project Ireland 2040, comprising the national planning framework and the national development plan, is now being implemented, providing €116 billion of investment in our public infrastructure. The Land Development Agency, another cornerstone initiative of Project Ireland 2040, has also been established and is working to ensure the optimum management of State land through development and regeneration, with an immediate focus on delivering homes, including social and affordable housing and cost rental.

We are seeing an increase in the number of new and refurbished houses available year on year. New housing output is projected to be up to 20,000 new houses and apartments this year, not including student accommodation or vacant properties brought back into use. However, we are aware of the huge challenge we are facing in meeting demand in the housing market. We will need to deliver approximately 35,000 units a year before supply meets demand. We are continuing to focus on increasing housing supply, tackling homelessness and increasing the availability of affordable and social housing. In addition to the work under way through Project Ireland 2040 and Rebuilding Ireland, budget 2019 provides for an increase of 25% in the housing budget for next year, to €2.3 billion.

Climate action is also at the heart of Project Ireland 2040, which provides for investment of €22 billion by the Government and semi-State bodies to ensure a step change in climate action performance. In that context, I and my ministerial colleagues met the Climate Change Advisory Council on 28 September to discuss its policy priorities. In budget 2019 allowances were introduced to help lower carbon emissions through a commitment under the rural development plan for agri-environmental allocations amounting to over €200 million, over €100 million for improvements in grant and premium rates for planting forests, a new accelerated capital allowances scheme for gas-propelled vehicles and refuelling equipment, the green public transport fund to improve the uptake of low-carbon energy-efficient technologies within the public transport sector and over €164 million to achieve Ireland's energy efficiency and renewable energy objectives. The Government will continue to deliver Project Ireland 2040 and related housing and climate action commitments in the period ahead.

**Extract: Oral reply to PQ on the Cabinet committee on infrastructure, environment and climate action, 23 May 2017**

**Available from:** [www.oireachtas.ie/en/debates/question/2017-05-23/2/?highlight%5B0%5D=cabinet&highlight%5B1%5D=committee&highlight%5B2%5D=infrastructure&highlight%5B3%5D=environment&highlight%5B4%5D=climate&highlight%5B5%5D=action](http://www.oireachtas.ie/en/debates/question/2017-05-23/2/?highlight%5B0%5D=cabinet&highlight%5B1%5D=committee&highlight%5B2%5D=infrastructure&highlight%5B3%5D=environment&highlight%5B4%5D=climate&highlight%5B5%5D=action)

The relevant section outlining the work of the Cabinet committee on infrastructure, environment and climate action, is highlighted below.

Joan Burton

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Joan Burton

Question: 1. Deputy Joan Burton asked the Taoiseach when the next meeting of the Cabinet committee on infrastructure, environment and climate action will take place. [23019/17]

Brendan Howlin

Share

Brendan Howlin

Question: 2. Deputy Brendan Howlin asked the Taoiseach when the Cabinet committee on infrastructure, environment and climate action last met; and when it will meet again. [23088/17]

Gerry Adams

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Gerry Adams

Question: 3. Deputy Gerry Adams asked the Taoiseach when the Cabinet committee on infrastructure, environment and climate action last met; and when it will meet again. [23089/17]

Richard Boyd Barrett

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Richard Boyd Barrett

Question: 4. Deputy Richard Boyd Barrett asked the Taoiseach when the Cabinet committee on infrastructure, environment and climate action last met; and when it will meet again. [24333/17]

Micheál Martin

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Micheál Martin

Question: 5. Deputy Micheál Martin asked the Taoiseach the number of times the Cabinet committee on infrastructure, environment and climate action has met since June 2016.

[24366/17]

Micheál Martin

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Micheál Martin

Question: 6. Deputy Micheál Martin asked the Taoiseach his Department's role in Ireland's infrastructure planning; and if there is an official involved in this from his Department.

[24676/17]

The Taoiseach

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I propose to take Questions Nos. 1 to 6, inclusive, together.

The Cabinet committee on infrastructure, environment and climate action has met on five occasions since it was reconstituted in June 2016. The last meeting of the Cabinet committee took place on 15 May 2017. The next meeting of the Cabinet committee will be scheduled shortly.

My Department provides the secretariat to the Cabinet committee on infrastructure, environment and climate action and chairs the associated senior officials' group. *The Cabinet committee oversees the development and delivery of key infrastructure and associated policy, including oversight of relevant commitments in A Programme for a Partnership Government. In addition, the committee addresses the climate change challenge in terms of domestic policy and in relation to Ireland's EU and international obligations.*